

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-291-GCM
2:05-cr-217-GCM-WCM-1**

CALVIN WATTY DRIVER,)
)
Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,) **ORDER**
)
)
Respondent.)
)

THIS MATTER is before the Court on Petitioner's *pro se* Letter, (Doc. No. 3).

Petitioner filed a "Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. § 2254 or 2255," (Doc. No. 1), that was docketed in this Court as a Motion to Vacate pursuant to 28 U.S.C. § 2255.

On October 26, 2020, the Court issued an Order pursuant to United States v. Castro, 540 U.S. 375 (2003) requiring Petitioner to inform the Court whether he agrees to the recharacterization of his § 2244 Petition as a § 2255 Motion to Vacate. See (Doc. No. 2). Petitioner has not yet responded to the Court's Order. In the instant undated Letter that was post-marked December 12, 2020 and was docketed on December 29, 2020, Petitioner states that he filed a motion for a continuance in this case and that he has contracted COVID-19 for which he is in quarantine. (Doc. No. 3).

The Court has not received a motion requesting a continuance, however, Petitioner's *pro se* Letter will be liberally construed as such. Petitioner will be granted an additional 30 days

within which to comply with the Court's October 26, 2020 Order. See (Doc. No. 2). If Petitioner fails to timely comply, the Court will recharacterize the petition as a § 2255 Motion to Vacate and it will likely be dismissed with prejudice as time-barred. Petitioner is cautioned that it is his responsibility to keep the Court informed of his current address at all times and that the failure to do so may result in this action's dismissal.

IT IS HEREBY ORDERED that:

1. Petitioner's Letter, (Doc. No. 3), is construed as a Motion for Extension of Time to respond to the Court's October 26, 2020 Order and is **GRANTED** for **thirty (30) days** from the date of this Order. If Petitioner fails to timely comply, the Court will recharacterize the petition as a § 2255 Motion to Vacate and it will likely be dismissed with prejudice as time-barred.
2. The Clerk is instructed to mail Petitioner a copy of this Order and the October 26, 2020 Order, (Doc. No. 2).

Signed: January 25, 2021



Graham C. Mullen
United States District Judge

